

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Scott Malcolm and Tim McGough,  
as Trustees of the Carpenters & Joiners  
Welfare Fund, Twin City Carpenters  
Pension Master Trust Fund, Carpenters  
and Joiners Apprenticeship and  
Journeymen Training Trust Fund, and  
Twin City Carpenters Vacation Fund;  
and each of their successors;

Civil No. 05-2737 (PAM/JJG)

Plaintiffs,

v.

**MEMORANDUM AND ORDER**

Arrow Insulation, Inc. and David Bach,  
individually,

Defendants.

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This matter is before the Court on Plaintiffs' Motion for Default Money Judgment. For the reasons that follow, the Court grants the Motion.

**BACKGROUND**

Plaintiffs filed a Summons and Complaint in this matter on November 29, 2005. The service of the Summons and Complaint was accomplished on Defendants on December 5, 2005. Plaintiffs filed an Amended Complaint on February 16, 2006. The service of the Amended Complaint was accomplished on Defendants on February 24, 2006. Defendants have failed to file and serve a response or Answer to the Amended Complaint.

Plaintiffs are trustees and fiduciaries of the above-referenced funds (the "Funds"). The Funds are multi-employer plans as defined by 29 U.S.C. § 1002(37). They are established to

provide, inter alia, pension, health and welfare vacation benefits and training to employees doing carpentry work in the construction trades, and are maintained for the benefit of workers pursuant to a Collective Bargaining Agreement. All contributions must be made and all reports must be submitted to Wilson-McShane Corporation, 3001 Metro Drive, Suite 500, Bloomington, MN 55425, as the administrative agent designated by the Trustees.

At all times herein, Defendants, through their execution of an Independent Agreement, are bound to the terms of a Collective Bargaining Agreement between the Lakes and Plains Regional Council of Carpenters and Joiners and the Carpentry Contractors Association and the Minnesota Drywall and Plaster Association.

## **DISCUSSION**

The Collective Bargaining Agreement requires employers, such as Defendants, to contribute every month, not later than the 15th of the following month, such sums for Pension, Health and Welfare, Vacation, Dental, Apprenticeship, and Promotion Funds as they may be established, an amount for each hour worked by all employees covered by the Collective Bargaining Agreement. Each payment shall be accompanied by a report form as specified by the Trustees.

The Collective Bargaining Agreement further requires that employers make available its employment and payroll records for examination and audit by the Trustees or their authorized agents whenever such examination is deemed, by the Trustees, to be necessary to the proper administration of the trust funds and to ascertain whether an employer have properly complied with its contribution obligations.

After service of the Amended Complaint, Plaintiffs obtained records in order to complete an audit for the period of July, 2004 through February, 2006. The total amount of fringe benefit contributions discovered to be owing to the Plaintiffs from the audit is \$81,446.64.

The Collective Bargaining Agreement and Trust Agreements provide that an employer is liable for an additional 10% of all contributions, which are not timely submitted, for liquidated damages, and also provides that Plaintiffs are entitled to their attorney fees and costs. The total amount due for liquidated damages for the audit period of July, 2004 through February, 2006 is \$8,144.66. The attorney fees and costs reasonably incurred by the Plaintiffs in the prosecution of their claims total \$3,291.44. Defendants are entitled to a credit of \$40,201.48 for payments submitted on their behalf by Kraus-Anderson Construction Company and Frana and Sons, Inc.

## **CONCLUSION**

The Court finds that Defendants are in default, and Plaintiffs are entitled to Default Money Judgment. Defendants owe the Funds \$81,446.64 for fringe benefit contributions and \$8,144.66 for liquidated damages for the audit period of July 2004 through February 2006. Defendants owe \$3,291.44 for attorney fees and costs. Defendants are entitled to a credit of \$40,201.48.

Accordingly, based upon all the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion for Default Money Judgment (Docket No. 13) is  
**GRANTED**; and
2. Judgment in the amount of \$52,681.26 is entered against Defendants in favor  
of Plaintiffs.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: May 11, 2006

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge